# STATE OF MICHIGAN

# COURT OF APPEALS

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| GENESIS DEVELOPMENT CORPORATION and GENESIS REAL ESTATE CORPORATION, | UNPUBLISHED November 6, 2001 |
| Plaintiffs-Appellees, | |
| v | No. 222661 Wayne Circuit Court |
| MICHAEL ILITCH and MARIAN ILITCH, | LC No. 92-215098-CK |
| Defendants-Appellants. | |

Before: Holbrook, Jr., P.J., and Cavanagh and R. S. Gribbs*, JJ.

PER CURIAM.

Defendants appeal from an order establishing an interest rate of twelve percent, pursuant to MCL 600.6013(5), on two money judgments entered in favor of Genesis Development Corporation and Genesis Real Estate Corporation. We affirm the order as to the judgment in favor of Genesis Real Estate Corporation, and we reverse the order as to the judgment in favor of Genesis Development Corporation.

In January 1994, a jury rendered a verdict in favor of plaintiffs on their claims that defendants breached contracts with Genesis Development, to build a house on property transferred to defendants, and Genesis Real Estate, that entitled it to a real estate commission. The two money judgments were upheld by this Court in *Genesis Development Corp v Ilitch*, unpublished opinion per curiam of the Court of Appeals, issued August 9, 1996 (Docket Nos. 176210 and 176212).

Thereafter, a dispute arose regarding the applicable interest rate on the judgments. Following plaintiffs' motion, the trial court ordered that judgment interest be at the rate of twelve percent pursuant to MCL 600.6013(5), not the United States treasury note average plus one percent under MCL 600.6013(6). We denied defendants' application for leave to appeal the trial court's order regarding the applicable interest rate; however, our Supreme Court remanded for review as if leave had been granted. *Genesis Development Corp v Ilitch*, 461 Mich 870; 603 NW2d 264 (1999). The issue in this case is whether either judgment was "rendered on a written instrument" pursuant to MCL 600.6013(5), thereby mandating an interest rate of twelve percent.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Statutory interpretation is a question of law subject to de novo review. *Yaldo v North Pointe Ins Co*, 457 Mich 341, 344; 578 NW2d 274 (1998). This Court will not overturn a trial court's findings of fact unless they are clearly erroneous or unless we are convinced that we would have reached a different result. *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 8-9; 596 NW2d 620 (1999).

MCL 600.6013(5) and (6) provide, in pertinent part:

> (5) For complaints filed on or after January 1, 1987, if a judgment is rendered on a written instrument, interest shall be calculated from the date of filing the complaint to the date of satisfaction of the judgment at the rate of 12% per year compounded annually, unless the instrument has a higher rate of interest.
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> (6) Except as otherwise provided in subsection (5) and subject to subsection (11), for complaints filed on or after January 1, 1987, interest on a money judgment recovered in a civil action shall be calculated at 6-month intervals from the date of filing the complaint at a rate of interest that is equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1, as certified by the state treasurer, and compounded annually, pursuant to this section.

The agreements involved in the present case consist of a written option contract, a written addendum to the option contract, a written escrow agreement, and oral promises and agreements under which defendants, and/or their agent, agreed to build a home on property owned by Genesis Development, which was to be transferred to defendants. Plaintiffs argued to the jury that defendants breached both oral and written contracts. The jury was instructed on breach of both oral and written contracts. Further, the jury was provided with a verdict form, one for each plaintiff, which simply asked the jury to determine whether defendants breached any provision of any contract between the parties, which the jury answered in the affirmative.

On appeal, defendants contend that because plaintiffs' arguments were based on breach of oral and written contracts, the jury instructions directing the jury to consider oral and written contracts, and the verdict form which did not distinguish between oral and written contracts, plaintiffs could not establish that the two judgments were based on written instruments pursuant to MCL 600.6013(5). We consider the judgments individually.

First, the agreement between defendants and Genesis Real Estate consisted of a written escrow agreement. The theory of recovery argued by Genesis Real Estate was that it was deprived of a real estate commission when defendants sold the property without listing the sale with it. During closing arguments, Genesis Real Estate only referenced the escrow agreement as support for its damages. The escrow agreement provided:

> If the Realtor of their choice does not sell the property in one year, the listing will then be given to Genesis Real Estate Corporation at the price and terms of the original option. Genesis Real Estate Corporation will be paid a six (6%) percent commission for the sale.

Upon review of the record, we find no evidence or arguments asserting that Genesis Real Estate was entitled to a real estate commission based on oral statements or promises. The oral agreements and promises appear to focus exclusively on the building of the house and not the real estate commission. The jury had no other evidence before it as to Genesis Real Estate's contract claims and damages other than the written escrow agreement. Therefore, the $56,250 judgment in favor of Genesis Real Estate could only have been rendered on the written instrument, thereby requiring the twelve percent interest rate to be applied pursuant to MCL 600.6013(5). Consequently, the trial court did not commit clear error in finding that the Genesis Real Estate judgment was rendered on a written instrument.

The judgment entered in favor of Genesis Development is more problematic. The theory of recovery for Genesis Development was that defendants breached a contract to build a house, thereby entitling it to lost profit. In particular, the option contract to purchase the lots was contingent on defendants building a minimum of 16,000 square foot house on one lot and further provided:

> D. If the parties cannot agree upon the final terms of the building contract, there shall be no obligation to either party, it being understood however, that the $10,000 *Per Lot consideration for this option contract is non-refundable. Total option for Lot D and Lot E is $20,000.00[.]
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> E. This agreement contemplates the construction and sale of a residence and lot together, not separate, and that until the final closing[,] title to both land and building shall remain with Genesis.

The escrow agreement provided, in pertinent part:

> 1. Mr. and Mrs. Ilitch have six months from December 15, 1988 to enter into a building contract with Genesis Development Corporation.
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> 2. If Mr. and Mrs. Ilitch do not enter into said building contract, they will list the property with a Realtor of their choice, with the conditions of the original option agreement dated April 15, 1988, (subject to the right of Genesis Development Corporation to construct any residence(s) to be built upon Parcels D & E)[.] Mr. and Mrs. Ilitch will retain all proceeds from the land sale of said parcels.
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> 4. When the building contract is signed by Mr. and Mrs. Ilitch, the lots will be quit claim deeded back to Genesis Development Corporation and the monies, $1,125,000.00 shall be part of the down payment of the building contract.

Although it appears that the jury may have considered, at least in part, the written option contract and escrow agreement in reaching its verdict against defendants for breach of contract, such a conclusion would be mere speculation on our part. On remand, our Supreme Court directed that plaintiffs had the burden of establishing that the judgment was rendered on a written instrument, and we hold that Genesis Development has failed to carry that burden. See *Genesis Development Corp*, *supra* at 870.

Genesis Development argues that the trial court, in its opinion denying defendants' motions for judgment notwithstanding the verdict, new trial, and remittitur, and this Court, in its unpublished opinion, held that it was defendants' breach of the written escrow agreement that caused its damages. This argument lacks merit. The trial court and this Court merely affirmed the jury's verdict and referenced the escrow agreement as supporting the verdict. *Genesis Development Corp, supra*, slip op at 6-7. Regardless, the trial court and this Court were not the triers of fact and could not "render" a verdict finding that Genesis Development's damages were caused by breach of the escrow agreement.

Genesis Development next argues that MCL 600.6013(5) does not require that the written instrument be the sole and exclusive basis for the verdict or judgment. However, Genesis Development cites no case law in support of its position. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Palo Group Foster Care, Inc v Dep't of Social Services*, 228 Mich App 140, 152; 577 NW2d 200 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Regardless, this argument lacks merit because it cannot be determined whether the jury rendered its verdict on the written contracts, even in part. The jury may have rendered its verdict in favor of Genesis Development based solely on oral agreements to build a home on the property in consideration of its transfer.[1]

Genesis Development further argues that defendants requested the general verdict form and strenuously objected to a more specific verdict form, which it requested; therefore, any ambiguity in the verdict must be construed against defendants. However, it does not appear from the record that Genesis Development objected to the verdict form at the time the parties were placing their objections on the record. Generally, an issue is not properly preserved if it is not raised before and addressed by the trial court. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

In sum, the option contract and escrow agreement were not the only agreements between defendants and Genesis Development; therefore, the trial court committed clear error in finding that the Genesis Development judgment was rendered on a written instrument.

[1] We recognize that issues regarding the statute of frauds might be implicated under MCL 566.106 and 566.108; however, that argument was never made in the first appeal, or in the present appeal. Without any guidance or direction, the jury clearly was untrained to be concerned with the issue, nor would it have been proper for them to do so.

We affirm the trial court's order regarding the applicable interest rate as to the judgment in favor of Genesis Real Estate. We reverse the trial court's order as to the judgment in favor of Genesis Development and direct that interest on the judgment be computed pursuant to MCL 600.6013(6). We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh
/s/ Roman S. Gribbs